

REMARKS

Claims 1-5, 8, 9 and 11-14 are pending in the application. Claim 1 has been amended. Reconsideration of this application is respectfully requested.

It is noted with appreciation that the Office Action has allowed claims 5, 8 and 9.

The Office Action requires a new oath or declaration because the original declaration is defective. Applicant is trying to contact the inventor for signature and will supply a new declaration in the near future. It is respectfully requested that this requirement be deferred since the inventor is located in a foreign country.

The Office Action rejects claims 1-4 under the second paragraph of 35 U.S.C. 112 as indefinite because "body potion" at lines 20 and 21 lacks antecedent basis. Independent claim 1 has been amended by adding a recitation of a "tubular main portion" and changing "body portion" to "tubular main portion". Accordingly, it is submitted that the rejection of claims 1-4 under the second paragraph of 35 U.S.C. 112 is obviated by the amendment.

The Office Action rejects claims 11-13 under 35 U.S.C 103(a) as unpatentable over UK Patent Application No. 2,296,309 to O'Hara et al., hereafter O'Hara.

This rejection is untenable. Independent claim 11 recites that:

"the thickness of the wall members is in the range of 0.3% to 3% of their width, the said width being measured in a direction transverse to the forward fluid flow direction".

The Office Action notes that O'Hara discloses at page 4, lines 1 and 2 that the thickness of the wall member is less than 1 millimeter. O'Hara does not disclose any relationship of this wall thickness with its width. The Examiner takes official notice "that to provide a width so that the thickness is in the range of 0.3% to 3% of the width is a design expedient over those features disclosed in O'Hara in that it neither provides any new or unexpected result nor solves any stated problem. The different widths merely relate to use of the valve in waste outlets of different sizes".

The official notice is challenged. The official notice is essentially of the fact "that the thickness [of the wall] is in the range of 0.3% to 3% of the width [of the wall] is a design expedient". The Examiner has not set forth sound technical and scientific reasoning as an explicit basis on which the Examiner regards the matter as subject to official notice (see MPEP 2144.03). The sound and technical reasoning must be clear and unmistakable. The statement that it "is a design expedient over those features disclosed in O'Hara in that it neither provides any new or unexpected result nor solves any stated problem" is a conclusion and not sound technical and scientific reasoning.

The statement that the "different widths merely relate to use of the valve in waste outlets of different sizes" is also a conclusion of use and not sound technical and scientific reasoning of the thickness/width relationship recited in independent claim 11.

For the above reasons, it is requested that the Examiner produce documentary evidence of the alleged fact.

Fig. 1 of the present application corresponds to O'Hara's Fig. 1 and is described at pages 2 and 3 of the specification. As stated at page 3, this known water trap has proved highly effective. However, the present invention improves the performance. In this regard, Applicant has identified that the wall members of

O'Hara's device can collect small volumes of liquid and/or solid before they open, which is undesirable. Applicant has appreciated that addressing this by varying the parameters of the wall members can in fact cause additional problems in that back-flow can occur (page 7, lines 17 and 18). Applicant has discovered that in order to provide suitable flow characteristics, the wall member thickness should be in the range set forth in independent claim1 so as to allow forward flow of even very small amounts of fluid, while maintaining a very secure barrier against back-flow (see page 7, lines 10-24).

The improved performance is significant. It is a new result that is unexpected. There is nothing in O'Hara that discloses or suggests the recited range of thickness. Neither does O'Hara describe the problems that are solved by the claimed invention.

For the reasons set forth above, it is submitted that the rejection of claims 11-13 under 35 U.S.C. 103(a) is erroneous and should be withdrawn.

The Office Action rejects claims 1-4 and 14 under 35 U.S.C 103(a) as unpatentable over O'Hara as applied to claims 11-13 and further in view of Belgian Patent No. 669,967 to De Bruyne, hereafter to De Bruyne.

With respect to claim 14, this rejection is erroneous for the same reason set forth in the discussion of claims 11-13. De Bruyne, which was cited for a different reason does not supply the deficiency of the official notice.

With respect to claim 14 and claims 1-4 as well, De Bruyne is quite dissimilar to the invention recited in independent claims 1 and 11. De Bruyne discloses a simple one way valve that relies on a hinged leaf, rather than flexible walls. Its whole design is constructed to accommodate and to support the hinging arrangement of this essentially door-like structure. In fact, the natural conclusion that would be drawn by one of ordinary skill in the art is that the space

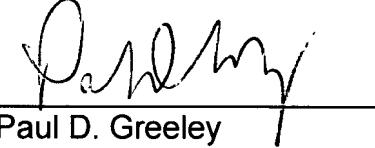
provided towards the bottom of the device is, in fact, more likely to be required of the unhindered operation of the leaf 20, as much as anything else.

For the reasons set forth above, it is submitted that the rejection of claims 1-4 and 14 under 35 U.S.C. 103(a) is erroneous and should be withdrawn.

Noting the claims 5, 8 and 9 are allowed, it is respectfully requested for the reasons set forth above that the rejections under 35 U.S.C. 112 and 35 U.S.C. 103(a) be withdrawn, that claims 1-4 and 11-14 be allowed and that this application be passed to issue.

Respectfully Submitted,

Date: 11/16/07



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